

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Andrea Mayer-Bruestle,  
Complainant,

vs.

**ORDER OF DISMISSAL**

Committee for VOTE a/k/a 833  
YesYesYes,

Respondent.

On October 28, 2013, Andrea Mayer-Bruestle filed a complaint alleging violations of the Fair Campaign Practices and Finance Acts.<sup>1</sup> By Order dated October 31, 2013, Administrative Law Judge Barbara J. Case dismissed all but two claims alleging violations of Minn. Stat. § 211A.02. On November 4, 2013, a probable cause hearing under Minn. Stat. § 211B.34 was held by telephone conference call to review those claims. The record with respect to the probable cause hearing closed on November 4, 2013.

Andrea Mayer-Bruestle (Complainant) appeared on her own behalf without counsel. Alan W. Weinblatt, Weinblatt & Gaylord, PLC, appeared on behalf of the Committee for Vote a/k/a 833 YesYesYes (Respondent or Committee).

Based on the record and all of the proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge finds that there is no probable cause to believe that the Respondent violated Minn. Stat. § 211A.02.

**ORDER**

**IT IS ORDERED:**

That there is no probable cause to believe that Respondent violated Minn. Stat. § 211A.02 as alleged in the Complaint, and therefore the Complaint is DISMISSED.

Dated: November 8, 2013

s/Barbara J. Case  
BARBARA J. CASE  
Administrative Law Judge

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<sup>1</sup> Minnesota Statutes Chapters 211A and 211B.

## NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statutes section 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 within five business days after granting the petition.

## MEMORANDUM

The complaint in this case relates to three questions that were placed before voters in Independent School District 833 during the November 5, 2013 election. The ballot questions sought to renew the School District's existing levy for a period of 10 years, increase the District's operating levy, and authorize the issuance of general obligation school building bonds.

On October 28, 2013, the Complainant filed a Complaint alleging that the Committee violated Minn. Stat. §§ 10A.20, 211A.02, 211A.05, and 211B.04. In an Order dated October 31, 2013, the Administrative Law Judge dismissed all but two of the claims alleged in the Complaint.<sup>2</sup> The two claims that survived *prima facie* review allege violations of Minn. Stat. § 211A.02. These allegations are addressed below.

### **Allegation #2**

The Complaint alleges that the Committee violated Minn. Stat. § 211A.02 by failing to accurately disclose financial information on its campaign finance reports. In the Committee's first campaign financial report for calendar year 2013 filed on or about October 18, 2013, for the reporting period between June 1, 2013 and October 4, 2013, the Committee lists "\$0" in total contributions and "\$3,236.50" in total expenditures with "\$2,200" cash on hand. The Complainant alleged that the Committee failed to accurately report contributions that it must have necessarily received in order to make the expenditures and accumulate cash on hand.

Prior to the probable cause hearing, the Respondent submitted an affidavit from Mary Scholz, the Committee's current campaign treasurer. Ms. Scholz attached to her affidavit the Committee's bank statement for November 30, 2007;<sup>3</sup> the Committee's

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<sup>2</sup> Two claims relating to the Committee's alleged failure to file a campaign finance report 10 days before the election and to report certain contributions and expenditures were voluntarily withdrawn by the Complainant when she was made aware that the Committee had, in fact, filed the required report.

<sup>3</sup> Respondent's Ex. A.

“final” campaign financial report dated January 14, 2008;<sup>4</sup> and the Committee’s bank statement for May 31, 2013.<sup>5</sup> These documents show that the Committee, which was formed in 2006 or 2007, had a balance in its bank account of \$2,279.09 as of May 31, 2013.<sup>6</sup>

Ms. Scholz explained in her affidavit that she erroneously listed on the Committee’s October 2013 campaign financial report that the Committee’s total cash on hand was \$2,200, instead of the actual \$2,279.90 balance that was in the Committee’s bank account. Ms. Scholz also explained that she listed all of the expenditures *incurred* by the Committee between June and October 2013, which amounted to \$3,236.50. However, as of October 18, 2013, only two of those expenditures had actually been paid: \$208.67 for flyers and \$50 for a conference. Ms. Scholz states in her affidavit that since this October 2013 report was filed, the remaining obligations have been paid.

In response to this explanation, the Complainant argued that the Committee should not have had any money left in its bank account because it filed a “final report” on January 14, 2008. The Complainant points out that, pursuant to Minn. Stat. § 211A.03, a final report may be filed “when all debts have been settled and all assets in excess of \$100 in the aggregate are disposed of.” The Complainant asserts that since the Committee maintained a balance of over \$2,200 in its bank account since November 2007, it should not have filed a “final report” in January 2008 or it should have disposed of these assets.

## Legal Standards

Minnesota Statutes section 211A.02, subdivision 1, states as follows:

- (a) A committee or a candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750 and shall continue to make the reports listed in paragraph (b) until a final report is filed.
- (b) The committee or candidate must file a report by January 31 of each year following the year when the initial report was filed and in a year when the candidate’s name or a ballot question appears on the ballot, the candidate or committee shall file a report:
  - (1) Ten days before the primary or special primary;
  - (2) Ten days before the general election or special election; and,

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<sup>4</sup> Respondent’s Ex. B.

<sup>5</sup> Respondent’s Ex. C.

<sup>6</sup> *Id.*

- (3) 30 days after a general or special election.

Minnesota Statutes section 211A.03 provides as follows:

A candidate or committee may file a final report when all debts have been settled and all assets in excess of \$100 are disposed of. The final report may be filed at any time and must include the kinds of information contained in the financial statements required by section 211A.02 for the period from the last previous report to the date of the final report.

### Probable Cause Analysis

Following a probable cause hearing, the task of the Presiding Judge is to answer the following question: Given the facts in the record, is it fair and reasonable to require the respondent to go to hearing on the merits?<sup>7</sup> A further hearing on the merits is appropriate if there are sufficient facts in the record to believe that a violation of law that is alleged in the complaint has occurred.<sup>8</sup> There are sufficient facts if the Presiding Judge is satisfied that the evidence in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case.<sup>9</sup>

After considering all of the evidence in the record, and the arguments of the parties at the probable cause hearing, the Administrative Law Judge concludes that the Complainant has failed to present sufficient facts to support her claim that the Committee violated Minn. Stat. § 211A.02. The Committee submitted evidence showing that it had a balance of \$2,279.09 in its bank account as of May 31, 2013, and this amount represented its “total cash on hand.” The Committee did erroneously list its cash on hand as \$2,200, but that clerical error is *de minimis* and does not reflect a failure to accurately disclose the information required under section 211A.02.

The Administrative Law Judge also rejects the Complainant’s new allegation that the Committee violated Minn. Stat. § 211A.03 by filing a “final report” in January 2008 without having disposed of all of its assets in excess of \$100. While this claim is not properly before the ALJ as it was not alleged in the initial Complaint and was not subjected to *prima facie* review, the ALJ notes that the Committee most likely erroneously identified the finance report required to be filed by January 31 of each year under Section 211A.02(b) as its “final report.” The filing of a final report is discretionary

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<sup>7</sup> See, *Hortman v. Republican Party of Minnesota*, OAH Docket No. 15-0320-17530-CV, at 2-3 (Probable Cause Order, October 2, 2006) (<http://www.oah.state.mn.us/aljBase/032017530.Prob.Cause.htm>).

<sup>8</sup> Minn. Stat. § 211B.34(2). See, *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 674 (Minn. 2003) (“in civil cases probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action, and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it”) (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)).

<sup>9</sup> In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party’s favor. See, e.g., Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975). Compare also, *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976).

and the statute does not provide for a penalty where a committee misidentifies a report. Moreover, a claim concerning the Committee's January 2008 campaign finance report is beyond the one year statute of limitations period provided for at Minn. Stat. 211B.32, subd. 2. Generally, a person making a complaint to this Office must file that claim "within one year after the occurrence of the act or failure to act that is the subject of the complaint...."<sup>10</sup>

For all of these reasons, this allegation is dismissed.

## **Allegation #5**

The Complaint alleges that the Committee failed to report on its campaign financial report the value of a conference room and mailing address at the Parkwood Place office building in Woodbury that the Complaint alleges was contributed to the Committee for its use beginning June 2013. Campaign material disseminated by the Committee included a disclaimer that lists 7650 Currell Boulevard, Woodbury, as its address.<sup>11</sup> According to the Complaint and its attached exhibits, attorney Carter Bergen leases an office at 7650 Currell Boulevard and he provided use of his conference room to the Committee. The office of Carter Bergen, P.A., is located in Suite 270 of the Parkwood Place office building.<sup>12</sup>

The Complainant also submitted a copy of an email she obtained that was sent to a Donald Huizenga from Ms. Scholz on October 19, 2013. In that email, Ms. Scholz states that a law office was allowing the Committee to use its conference room for its meetings and its address as a "mail drop." It appears from the content of the email that Ms. Scholz was responding to Mr. Huizenga's inquiry regarding where to send a donation to the Committee.<sup>13</sup> At the hearing, the Complainant testified that she had been copied on the email exchange between Mr. Huizenga and Ms. Scholz, and that that is how she obtained the email. However, the copy of the email submitted into the record does not list the Complainant as being copied on the exchange.

The Complainant estimates that the in-kind donation value of the use of the conference room to be approximately \$2,655, based on a monthly office rental cost of \$560. The Complainant testified at the probable cause hearing that she arrived at this estimated value by looking at a commercial real estate website called [www.loopnet.com](http://www.loopnet.com), which lists monthly rental rates for different offices located in the office building at issue. According to the Complainant, this particular building has offices for rent that range from 960 square feet to 6,000 square feet. The Complainant based her monthly rental estimate on the rate given for an office 1,062 square feet in size.

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<sup>10</sup> Minn. Stat. § 211B.32, subd. 2.

<sup>11</sup> The Complainant listed the address as "7650 Parkwood Place" in the Complaint. However, the address listed for the Respondent by the Complainant on the Complaint form, and the address provided in the disclaimer that appears on the copies of the campaign material submitted by the Complainant is 7650 Currell Boulevard.

<sup>12</sup> Complaint Ex. B.

<sup>13</sup> Complaint Ex. B.

The Complainant conceded at the hearing that she had no personal knowledge as to the dimensions of the actual conference room in the office of Carter Bergen, P.A., that was used by the Committee. Nor did the Complainant know how many times the Committee actually met at the conference room during the campaign season.

The Respondent argued that the evidence is insufficient to support finding probable cause that it violated the reporting requirements of Minn. Stat. § 211A.02.

After considering all of the evidence in the record and the arguments of the parties at the probable cause hearing, the Administrative Law Judge concludes that the Complainant has failed to present sufficient facts to support her claim that the Respondent failed to report the in-kind contribution of the use of a conference room and mailing address. The Complainant's contention that the reasonable fair market value of the in-kind donation of the use of a conference room is the commercial monthly rental rate of an average office in the same building is unavailing. The law does not require accounting for the use of a room as if it was commercially leased on a monthly basis.<sup>14</sup> Moreover, reportable "contributions" do not include services provided by an individual without compensation.<sup>15</sup> Presumably, the monthly rent for the office had already been paid by the Bergen law firm and its use by the Committee was permitted by the firm. If the conference room was not offered to the Committee for its use, it does not necessarily follow that the Committee would have had to rent a conference room. It could have met at a variety of locations free of charge, such as someone's home or a coffee shop.

The Complainant's evidence as to the market value of the in-kind donation of the use of a conference room and mailing address is insufficient to support a finding of probable cause that the Respondent violated Minn. Stat. § 211A.02. Absent some evidence that the Committee's financial reporting is false, the record does not support finding probable cause that a violation of Minn. Stat. § 211A.02 has occurred.

The Complaint is dismissed in its entirety.

**B. J. C.**

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<sup>14</sup> See *Hill v. Notch*, OAH Docket No. 8-6325-17585 (October 27, 2006) (The Administrative Law Judge concluded that donations of surplus boat canvas to a ballot committee did not require accounting "as if they were commercially purchased.")

<sup>15</sup> See Minn. Stat. § 211A.01 (5) (definition of "contribution"); Advisory Opinion 341 (Campaign Finance Disclosure Board concludes that the value of certain in-kind donations of computer services, where the "contributor has already paid for the item being donated," may be "zero") (<http://www.cfboard.state.mn.us/ao/AO339.pdf>).